

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

DUNCAN J. McNEIL III,

Plaintiff,

v.

No.: 3:05-cv-392  
(VARLAN/GUYTON)

UNITED STATES OF AMERICA, et al.,

Defendants.

**MEMORANDUM AND ORDER**

The court is in receipt of a *pro se* prisoner's complaint and an application to proceed *in forma pauperis*. Pursuant to the Prison Litigation Reform Act, a prisoner cannot bring a new civil action or appeal a judgment in a civil action *in forma pauperis* if he or she has, three or more times in the past, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was frivolous, malicious, or failed to state a claim upon which relief may be granted. The only exception is if the prisoner is in "imminent danger of serious physical injury." 28 U.S.C. §1915(g).

Plaintiff, a prisoner in the State of Washington, has received "three strikes" in the United States District Court for the Eastern District of Washington and has been deemed by that court to be a "vexatious litigant;" the court further noted that plaintiff has filed complaints in over 70 judicial districts throughout the country. *Duncan J. McNeil v. United*

*States, et al.*, Civil Action No. CV-05-211-AAM (E.D. Wash. August 9, 2005) (order of dismissal).<sup>1</sup>

Plaintiff makes a conclusory allegation that he is in "imminent danger of serious physical injury," without supporting facts. A conclusory allegation of danger is not sufficient to apply the exception to the three-strike rule. Thus, in order to file this action, plaintiff must prepay the entire \$250.00 filing fee. Leave to proceed *in forma pauperis* is **DENIED**. Plaintiff's complaint shall be filed for the purpose of making a record and for statistical purposes, and shall be **DISMISSED WITHOUT PREJUDICE** pursuant to the three-dismissal rule of 28 U.S.C. §1915(g).

**E N T E R :**

s/ Thomas A. Varlan

UNITED STATES DISTRICT JUDGE

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<sup>1</sup>In fact, a name search conducted in the Prisoner Litigation Index resulted in over 100 federal case matches for plaintiff.